

**UNITED STATES OF AMERICA
BEFORE THE NATIONAL LABOR RELATIONS BOARD
EIGHTEENTH REGION**

NORTH MEMORIAL MEDICAL CENTER

Employer

and

PROFESSIONAL GUARDS UNION
LOCAL NO. 112

Petitioner

18-UC-428

DECISION AND ORDER CLARIFYING THE UNIT

Petitioner seeks to include in its existing unit Security Shift Coordinators. The Employer contends that the Coordinators are supervisors within the meaning of Section 2(11) of the Act, and therefore that they should be excluded from the unit. Based on record evidence I conclude that Security Shift Coordinators are not supervisors as defined by Section 2(11) of the Act and should therefore be included in the existing bargaining unit represented by Petitioner.

In accordance with the provisions of Section 3(b) of the Act, the Board has delegated its authority in this proceeding to the undersigned. After thorough consideration of the record and relevant Board precedent, I find:

1. The hearing officer's rulings made at the hearing are free from prejudicial error and are hereby affirmed; and

2. North Memorial Medical Center (Employer) is engaged in commerce within the meaning of the Act, and it will effectuate the purposes of the Act to assert jurisdiction herein.¹

BACKGROUND²

On December 30, 2009, in Case 18-RC-17669, Petitioner was certified to represent a unit of Security Officers whose status was as full-time equivalents at the Employer's Robbinsdale facility. The Security Shift Coordinators (Coordinators) voted by challenged ballot because the Employer contended, contrary to Petitioner, that the Coordinators are supervisors within the meaning of Section 2(11) of the Act and should therefore be excluded from the bargaining unit. Petitioner now seeks to clarify the unit by including the Coordinators in the existing unit. The Employer continues to assert that the Coordinators are supervisors as defined by the Act and that their inclusion in the bargaining unit is inappropriate.

THE EMPLOYER'S OPERATION

The Employer is an acute care hospital. Its operation includes a Safety and Security Department that employs approximately thirty-five security personnel. This number includes the Director Gerald Pedlar, Senior Supervisor Rich Ramacher, Supervisor Ed Markey, four Coordinators, five Surveillance Specialists, and twenty-three Full-Time and Part-Time Security

¹ The Employer is a corporation engaged in the operation of a hospital at its facility located at 3300 Oakdale Avenue North, Robbinsdale, Minnesota, the only facility involved herein. During the past 12 months, a representative period, the Employer purchased and received at its facility goods and services valued in excess of \$50,000 directly from sources located outside the State of Minnesota. During this same period, the Employer derived gross revenue in excess of \$250,000.

² The Employer filed a motion requesting that the Petitioner's post-hearing brief be stricken due to the Petitioner's failure to comply with 102.114 of the Board's Rules, which require that a copy of a request for an extension of time to file briefs must be served on the other parties. Petitioner was given notice of this requirement through the Summary of Standard Procedures. After careful review of the facts, including that the Employer timely filed its brief on the original due date because it was unaware that Petitioner filed a request for an extension of time to file briefs, as well as the fact that I granted the request, and including that the Petitioner failed to notify the Employer in writing of its request for an extension of time to file briefs, I hereby grant the Employer's motion.

Officers. The four current Coordinators are Jim Lanning, Dave Dustin, Roger Reffenberger, and Eric McPherson.

In February 2009, the Employer eliminated six lead officer positions and created in lieu thereof the contested Coordinator positions. The individuals who now hold the Coordinator positions were each previously employed as lead officers and were converted to Coordinator positions. It is the Employer's position that the lead officers did not have supervisory authority.

The Employer's facility is staffed by security officers twenty-four hours a day, seven days a week. The Director and the two Supervisors do not work late evenings or weekend shifts, which the Employer refers to as the "off hours." One of the four Coordinators is scheduled to work during the "off hours," including sharing the weekend shifts so that each Coordinator works two 12-hour shifts every other weekend. During these times, the Coordinator can contact Senior Supervisor Ramacher, who is always on-call, if necessary.

The Security Officers' (Officers) duties are to stand guard at assigned posts, "tour" various areas throughout and surrounding the Employer's facility, monitor closed-circuit surveillance screens, and respond to any specific security threats that may arise. When a Coordinator arrives at work he checks the Daily Activity Report completed by the Coordinator on the preceding shift, which details the events of the prior shift and which reports any incidents or staffing issues. The Coordinator ensures that minimum staffing levels are met and that all necessary posts and tours are covered. If necessary he reassigns guards to fill posts and calls in additional Officers to cover absences. The Coordinator also sets the Officers' schedule and posts assignments for the next 48 hours. In a Coordinator's absence, the senior Officer on duty reviews or completes the Daily Activity Report and calls in Officers to cover any absences.

ANALYSIS

Supervisory Status as Defined by the Board

Pursuant to Section 2(3) of the Act, “any individual employed as a supervisor” is specifically excluded from the term “employee.” Section 2(11) of the Act defines the term “supervisor” to include any individual having authority, in the interest of the employer, to hire, transfer, suspend, lay off, recall, promote, discharge, assign, reward, or discipline other employees, or responsibly to direct them, or to adjust their grievances, or effectively to recommend such action. Possession of any one of the indicia specified in Section 2(11) is sufficient to confer supervisory status on an employee, provided that authority is exercised with independent judgment on behalf of management and not in a routine manner. See, e.g., *Airline Commercial Barge Line Co.*, 337 NLRB 1070 (2002); *Browne of Houston*, 280 NLRB 1222, 1223 (1986). The term “independent judgment” applies regardless of the supervisory function implicated. See *Oakwood Healthcare, Inc.*, 348 NLRB No. 37, slip op. at 7 (2006). To demonstrate independent judgment, the putative supervisor “must at minimum act, or effectively recommend action, free of the control of others and form an opinion or evaluation by discerning and comparing data.” An employee does not exercise independent judgment if his or her decisions are “dictated or controlled by detailed instructions, whether set forth in company policies or rules, the verbal instructions of a higher authority, or in the provisions of a collective-bargaining agreement.” *Id.*

The Board construes supervisory status narrowly “because the employee who is deemed a supervisor is denied the rights which the Act is intended to protect.” *Chevron Shipping Co.*, 317 NLRB 379, 380-381 (1995). It is therefore incumbent upon the party asserting that a group of individuals are statutory supervisors to demonstrate their supervisory status, and any lack of

evidence is construed against the moving party. See *NLRB v. Kentucky River Community Care, Inc.*, 121 S.Ct. 1861, 1866, 167 LRRM 2164 (2001); *Elmhurst Extended Care Facilities*, 329 NLRB 535, 535 fn. 8 (1999). “Whenever the evidence is in conflict or otherwise inconclusive on particular indicia of supervisory authority, [the Board] will find that supervisory status has not been established, at least on the basis of those indicia.” *Phelps Community Medical Center*, 295 NLRB 486, 490 (1989). Mere inferences or conclusionary statements without detailed, specific evidence of the exercise of independent judgment are insufficient to establish supervisory authority. *Sears, Roebuck & Co.*, 304 NLRB 193 (1991).

The Employer concedes that Coordinators do not hire, transfer, suspend, lay off, recall, promote, discharge, reward, or discipline employees, and the record contains no evidence to support a contrary finding. Rather, the Employer maintains that Coordinators exercise supervisory authority by assigning and responsibly directing employees and by effectively recommending hire and discipline. Contrary to the Employer, Petitioner contends that Coordinators are not supervisors as they do not exercise genuine authority or independent judgment concerning any of the indicia of supervisory status.

Assignment of Work

The Board finds that an individual assigns within the meaning of Section 2(11) if he or she uses independent judgment to designate an employee to a physical location, appoint an employee to a shift or overtime period, or give an employee significant overall duties or tasks. *Oakwood Healthcare, Inc.*, 348 NLRB No. 37, slip op. at 4 (2006) (“The assignment of an employee to a certain department (e.g., housewares) or to a certain shift (e.g., night) or to certain significant overall tasks (e.g., restocking shelves) would generally qualify as ‘assign’ within our construction.”) “[T]he party seeking to establish supervisory authority must show that the

putative supervisor has the ability to require that a certain action be taken; supervisory authority is not established where the putative supervisor has the authority merely to *request* that a certain action be taken.” *Golden Crest Healthcare Center*, 348 NLRB No. 39, slip op. at 3 (2006) (emphasis in original).

The Employer contends that Coordinators exercise supervisory authority because they assign Officers to particular posts and schedule officers for shifts, the latter of which entails asking Officers to come in early or work late. Citing *Oakwood Healthcare, Inc.*, 348 NLRB at 689, the Employer notes specifically that Coordinators assign Officers throughout the day, rather than issue one-time directives.

Authority to make post assignments may implicate supervisory authority, and the record reflects that Coordinators do assign Officers to posts and ensure that there is a minimum number of Officers on duty on each shift. Nevertheless, the record fails to establish that Coordinators exercise independent judgment by assigning or scheduling Officers. Moreover, there is no evidence that the various posts require the performance of different types of work so that the assignment to a particular post has a material effect on the employee’s terms and conditions of employment.

In making post assignments, the Coordinators use a computer-generated form that is created in advance that sets forth the specific posts and hours that must be filled. Coordinator Lanning testified that Coordinators do not take officers’ individual skills or abilities into account in scheduling or assigning them because all of the Officers have the same level of training. Lanning further testified that at times Officers may choose their posts and work start times themselves with no direction whatsoever from a Coordinator: “For example, if Officer Kuzma gets in early on the shift, he could – and he’s self-motivated to go up and relieve the emergency

department booth, he could be – he would go up there and do that himself and so that that next guy can get off his shift and be out of there on time.”³ The predominant factor in making the daily post assignments is to “balance out the workload.” However, distribution of various tasks among coworkers in order to ensure that operational needs are satisfied is insufficient to establish the assignment of significant overall duties. *Croft Metals, Inc.*, 348 NLRB 717 (2006).

The record fails to establish that Coordinators exercise independent judgment in scheduling Officers to cover sick leave or other employee shortages. While it is true that an Officer is required to speak to a Coordinator or to a supervisor when calling in sick, and it is the Coordinator’s responsibility to then find another Officer to cover the absence, in determining which Officer to call to cover the shift the Coordinator merely follows a seniority list, a list on which Coordinators’ names are also included. There is no evidence that Coordinators assess individual Officers’ abilities or skills or weigh operational needs of the facility. Rather, they simply call the next Officer on the list. Lanning also testified that in the event there are no Coordinators or supervisors present, the senior Officer on duty takes the sick call and has the responsibility of ensuring that the shift is adequately covered. In fact, Senior Supervisor Ramacher testified that in the absence of a Coordinator or supervisor, the senior Officer would “step up and in a pinch...fill that role.”

The record also fails to establish that Coordinators exercise sufficient independent judgment when making post assignments in response to security-related emergencies.

³ The Employer argues in its brief that certain security posts are considered “mandatory” positions that must be staffed before other positions “only because the Security Shift Coordinators have deemed them as such,” thus demonstrating Coordinators’ use of independent judgment. However, the record is unclear as to who deemed these security posts mandatory. The Employer argues that Coordinator Lanning’s testimony, on page 62 of the transcript, supports its argument. However, on this page of the transcript Lanning states only that Coordinators prioritize some posts over others because those positions are considered mandatory. Lanning does not state *who* determined that these posts are mandatory or how these determinations were made. It is the Employer’s conclusion, not Lanning’s testimony, that the Security Shift Coordinators made this “mandatory” determination.

Occasionally a crisis of a serious nature arises at the Employer's facility which requires a reassignment of Officers. However, Lanning testified that even in these infrequent instances Coordinators exercise very little true discretion. Coordinators may redirect Officers "[i]n certain cases but not normally" because the Officers know the job so well that they are able to redirect themselves. Redirecting Officers only in "certain cases" is not sufficient to establish supervisory authority. In *Oakwood Healthcare, Inc.*, the Board stated that supervisory authority must be exercised on a regular - not sporadic - basis, and must constitute a substantial portion of the individual's work time. See *Oakwood* at 698-700. Moreover, the occasional switching of jobs among employees more closely resembles an ad hoc instruction that the employee perform a discrete task than the assignment of significant overall duties.

The Employer's Safety and Security department also experiences what is referred to as a "standby," which is distinct from a serious crisis. A "standby" occurs on a more regular basis and is when the Employer's medical staff requests the presence of an Officer in a particular location of the facility because of a specific threat. The record fails to establish that Coordinators regularly exercise independent judgment during standbys. Standby requests are not even made through Coordinators. Rather, standby requests are communicated through the surveillance system to all Officers equally. Lanning testified that "usually" the Officers respond to standbys on their own, repositioning themselves and relieving one another without any direction and that Coordinators make the necessary staffing only for longer standbys.

Thus, the record evidence demonstrates that the Coordinators' assignment and scheduling of Officers are mostly routine tasks that do not require the exercise of independent judgment, that Officers are largely self-directed, and that Officers and Coordinators at times even share scheduling duties.

Moreover, as noted previously, the Employer must show that the Coordinators have the ability to require, not merely *request*, that their assignment and scheduling directives be followed. See *Golden Crest Healthcare Center*, 348 NLRB No. 39, slip op. at 3 (2006). The Employer argues that Coordinators' directives to Officers are mandatory and that they have the authority to require Officers to comply with their decisions, but there is no evidence of this authority. The Employer's mere conclusion, without detailed, specific evidence, is insufficient. See *Sears, Roebuck & Co.*, 304 NLRB 193 (1991).⁴ The record does not establish that Coordinators can require Officers to come in early or stay late to fill absences on shifts or that they can require them to comply with a particular assignment. The Employer's own witness, Director Gerald Pedlar, admitted that it is not mandatory for Officers to come in early or stay late when requested to do so. While Senior Supervisor Ramacher stated that he would consider it insubordination for an Officer to refuse to stay late to cover a shift when asked to do so by a Coordinator, this testimony reflects Ramacher's view, and in no way suggests that Coordinators have the right to cite Officers for insubordination. Moreover, he cited no specific examples of when an Officer has actually been found insubordinate for such refusal. Lanning testified that a Coordinator could require an Officer to stay over on a shift but that "it does not happen." Thus, the record reveals that Coordinators merely seek out volunteers.

Similarly, the record failed to establish that Coordinators have the authority to require Officers to comply with their assignment requests. When asked whether or not Officers understand that they must respond affirmatively to a Coordinator's assignment, Lanning testified

⁴ Citing to page 140 of the Transcript, the Employer argues in its brief that "the Union's own witness conceded that...the Coordinator could require the Officer to immediately move to a different post or require that the Officer rotate in accordance with the Coordinator's rotation and tour schedule." However, page 140 of the Transcript concerns the testimony of Employer witness, Senior Supervisor Rick Ramacher, on redirect examination, not the testimony of the Union's witness.

only, “Yes, we hope so.” He conceded that there are instances when an Officer does not comply and that the Coordinator’s only recourse is to try talking to them and “hopefully...just work it out.” If those measures fail, the Coordinator’s only option is to report it to one of the supervisors who have the authority to do something about it. The Coordinator has no authority to issue discipline or otherwise force compliance himself.

Responsible Direction

An individual with oversight responsibilities exercises supervisory authority if he or she directs the order in which tasks are performed, and which employees will perform certain tasks, provided that the direction is both responsible and carried out with independent judgment.

Oakwood, 348 NLRB No. 37 at 6. “For direction to be ‘responsible,’ the person directing and performing the oversight of the employee must be accountable for the performance of the task by the other, such that some adverse consequence may befall the one providing the oversight if the tasks performed by the employee are not performed properly.” *Id.* at 7.

In maintaining that Coordinators responsibly direct employees, the Employer contends that Coordinators mandate specific tasks in accordance with the needs of the Employer’s facility and reassign officers from one task to another. Specifically, the Employer cites as an example Lanning’s decision to increase Officer presence on March 26, 2010, and his communication to the Coordinator on the next shift via the Daily Activity Report to direct an Officer to “tour unit hourly until patient is discharged from unit.” However, this March 26 incident appears to be a “standby-type” assignment that is routine in nature and did not involve the assignment of a specific Officer. Lanning’s report to the next Shift Coordinator was simply the communication of an event and the related staffing need, again a routine act of communication. The Employer broadly asserts, without identifying a specific example, that a Coordinator will reassign an

Officer who is patrolling the parking lot around the facility if the Coordinator determines that, based on his experience, the Officer's presence is needed elsewhere, or will move Officers away from their posts onto the floor where a crisis is occurring. Lastly, the Employer notes that even the Petitioner's witness, Officer John Kuzma, admitted that he was aware of Coordinators reassigning Officers from one post to another.⁵ However, the record has no evidence that Coordinators are held accountable should an assignment not be made, an Officer failed to accept an assignment, or for the Officer's performance of his work assignments.

In maintaining that Coordinators responsibly direct employees, the Employer also contends that Coordinators correct Officers' improper performance of their duties. Coordinator Lanning reported in an email to Ramacher and Markey that Officer Brandon Gautsch had failed to complete environmental tours. While Gautsch received a "coaching," the first step in the Employer's progressive disciplinary process, as a result of Lanning's email, the decision to issue a coaching was not made by Lanning but by a supervisor. Similarly, Coordinator Lanning reported in his evaluation of Officer/Surveillance Specialist Nicole Richardson that Richardson spends too much time on social internet websites. However, Richardson did not receive any discipline as a result.

Notwithstanding evidence that Coordinators have oversight responsibilities and are expected to redirect Officers in order to respond to operational needs or to correct Officers who are not properly performing their duties, there is no evidence that Coordinators suffer any adverse consequences if those they are overseeing fail to perform. The Employer offered into evidence Coordinators' self-evaluations in which Coordinators evaluate their own abilities to

⁵ The Employer cites to page 142 of the Transcript, claiming that this is the point in the record in which the Union's witness, John Kuzma, admitted that Coordinators reassign officers. Page 142 though concerns the testimony of the Employer's witness, Labor Relations Representative George Wesman, not Kuzma.

lead other Officers, but the record offers no evidence that Coordinators are disciplined based upon their failure to lead. Absent evidence that an alleged supervisor's terms and conditions of employment have been affected based on his or her direction of other employees, the Board requires evidence that there is at least a genuine prospect for consequences, not merely conclusionary evidence that consequences *could* occur. See *Oakwood*, 348 NLRB No. 37 at 7. There is no evidence that Coordinators have even a prospect of suffering consequences. Based on the record testimony, there is no basis on which to conclude that the Employer holds Coordinators accountable for the performance of fellow employees. Accordingly, I do not find that Coordinators responsibly direct employees.

Recommending Hire

While the Employer stated an intention to involve Coordinators in the hiring process, there is no evidence that Coordinators have effectively recommended the hire of employees. There has been one new hire into the Safety and Security Department since the advent of the Coordinator position and no Coordinator participated in the hiring process on that occasion. Senior Supervisor Ramacher testified that only he, Ed Markey, and Gerald Pedlar conducted the interview in early or mid-2009. When asked if Coordinators were present during the interview, Ramacher responded, "There were none available at the time." He did not explain why none of the Coordinators was available to assist with the interview, as those positions had been filled when the Employer hired the new Officer. Lanning testified that he had "assisted" in the pre-hire interview process *before* he became a Coordinator and his assistance involved review of answers the applicant provided to pre-set question to "see if he is a candidate for a position."

The record, however, does not reflect whether Lanning's involvement included an effective recommendation regarding the applicant's suitability for hire.⁶

In answer to the question what his expectation of the Coordinators is with regard to the hiring process, Ramacher gave a vague and general response: He stated that, "The expectation is that we bring in the Coordinators based, you know, certainly based upon their availability to come in and assist myself, Mr. Markey, the other supervisor, and Mr. Pedlar, as our acting director." The agenda from a Coordinators meeting on May 20, 2009, indicates that the Employer asked Coordinators for "any recommendations," but Ramacher could not recall anything more specific than, "we certainly want the Coordinator's input at these meetings. It's very vital to our daily business..." Although the Employer offered this general testimony that Coordinators can recommend applicants for hire, the Board requires more than conclusionary evidence to establish supervisory status. See *Volair Contractors*, 341 NLRB 673, 675 (2004).

In summary, the evidence fails to establish that Coordinators hire or effectively recommend hiring employees.

Recommending Discipline

The record contains no evidence that Coordinators possess authority to effectively recommend the discipline of employees. While Coordinators regularly observe Officers' work performance and record their observations in evaluations and Daily Activity Reports, there is no evidence that these evaluations or reports have ever led to an Officer's discipline or, alternatively, promotion. The authority to evaluate is not a supervisory indicia if the evaluation does not affect employee status or tenure. *Volair Contractors, Inc.*, 341 NLRB 673 (2004).

⁶ Officer John Kuzma testified that prior to the implementation of the Coordinator program in 2009, lead officers, who the Employer contends had no supervisory authority, were involved in the hiring process. (T. 152)

One example cited by the Employer in support of its argument that Coordinators have the authority to recommend discipline involved Coordinator Lanning and Officer Brandon Gautsch.⁷ Lanning told Gautsch in an email, “Brandon, [a]fter reviewing your submitted environmental tours, I see that you still have not completed the following areas... Inspection was due on December 25. . . Let me know if have [sic] any questions, these areas should have been completed in the [sic] 2009” Lanning’s email made no mention of possible discipline of Gautsch because of his failure to timely complete his inspections. Lanning copied Ramacher and Markey and Coordinator Roger Reffenberger on the email. Gautsch later received a verbal “coaching” from Ramacher and Markey as a result of the email, which is the first step in the Employer’s progressive disciplinary process. However, there is no evidence that Lanning played any role in the decision to discipline Gautsch other than to report his conduct, particularly in view of other evidence (cited below) where Coordinators’ complaints about performance did not lead to discipline. Even if one concluded that Lanning’s email constituted a recommendation, the Board holds that isolated incidents are insufficient to establish supervisory authority. See *Shaw, Inc.*, 350 NLRB No. 37, slip op. at 4 (2007). I therefore find the above evidence insufficient to conclude that Coordinators exercise supervisory authority.

The record reveals several other instances in which Coordinators reported Officer performance problems to supervisors. However, there is no evidence that any of these reports resulted in discipline or any other change to employees’ work status. The Employer offered into evidence the performance evaluations of Officers Nicole Richardson, Adam Ahern, and Terry Hegdahl. Coordinator Dave Dustin noted in Richardson’s evaluation that she “is very inefficient

⁷ The Employer cites to pages 128 and 129 of the Transcript in support of its argument that Lanning’s email led to the “coaching” of Officer Gautsch. However, pages 128-129 make no reference to Lanning’s email or Officer Gautsch’s coaching.

in time management,” “spends far too much time socializing on the phone,” “does not accurately log daily calls,” “is away from her post,” and “does not accept criticism or suggestions.” It was also reported that Richardson visits social internet sites during working hours, a point that was discussed with Ramacher at the Coordinators’ meeting. Coordinator Lanning reported that Hegdahl “misses phone calls,” “has communication issues,” and “makes scheduling difficult.” Yet there is no evidence either Richardson or Hegdahl were disciplined as a result of these comments. Alternatively, Ahern’s evaluations are positive, reporting that he is “an outstanding officer whose work ethic shines brightly,” but Ahern received no promotion or other benefit as a result. The Employer admitted that none of these three Officers have had their terms of employment changed in any way as a result of these Coordinator evaluations. Similarly, Coordinator Reffenberger sent Ramacher an email reporting that Officer Gallagan was having performance problems, but Gallagan was not disciplined as a result of this email. Although Ramacher testified that an Officer’s performance evaluation would affect Ramacher’s decision to promote that Officer to a Coordinator position should that Officer apply, there is no evidence that this has ever actually occurred.

The above-described instances suggest that Coordinators merely serve as conduits of information rather than as supervisors invested with the authority to recommend discipline. Authority to submit reports on employee conduct does not alone establish supervisory authority. See *Williamette Industries*, 336 NLRB 743 (2001). Based on the lack of specific evidence showing Coordinators’ recommendations have led to employee discipline, I do not find that the Employer has established that the Security Shift Coordinators effectively recommend discipline.

Secondary Indicia

The Employer argues that Coordinators have the authority to send Officers home, yet also admits that no Coordinator has actually exercised this authority. Supervisory authority is not established when the evidence fails to show that the authority has actually been exercised. *Security Guard Services*, 154 NLRB 8 (1965). In any event, the Employer argues that Officer Kuzma's belief that Coordinators can send Officers home is significant because Kuzma is a subordinate. However, Kuzma's perception is secondary indicia that cannot support a finding of supervisory authority absent evidence of statutory indicia. See *Sam's Club*, 349 NLRB 1007, 1014 (2007); see also *Williamette Industries*, *supra*, and *Blue Star Ready-Mix Concrete Corp.*, 305 NLRB 429 (1991) (where Board held that the fact that an individual is held out as a supervisor is not necessarily dispositive of supervisory status).⁸

The Employer also contends that the Coordinators' supervisory authority is established by the fact they receive higher pay than Officers, received raises when promoted from lead Officers to Coordinators, wear slightly different badges than Officers, attend meetings with supervisors in which Officers are not allowed, and are the highest-ranking security department personnel on site during off hours. While it is true that Coordinators qualify for higher pay than Officers, according to the Employer's salary structure the difference is minimal. There is only a \$1.65 an hour difference between an Officer's and a Coordinator's minimum pay. While Coordinators are the highest-ranking security officers on duty during evenings and weekends, the record does not establish that they exercise independent judgment during those periods particularly because Senior Supervisor Ramacher testified that he is on-call at all times during

⁸ Kuzma also acknowledged that he risks being disciplined – though by one of the supervisors, not a Coordinator – if he refuses to comply with a Coordinator's post assignment, but he said this has never actually happened. (T. 151)

off hours. Moreover, the record reveals instances when Coordinators have sought his direction in those hours.

Evidence concerning Coordinators' wages, attire, and attendance at meetings are all secondary indicia of supervisory authority. Secondary or non-statutory indicia can be used as background evidence on the question of supervisory status but are not themselves dispositive of the issue in the absence of evidence indicating the existence of one of the primary or statutory indications of supervisory status. See, *Training School of Vineland*, 332 NLRB 1412 (2000), and *Chrome Deposit Corp.*, 323 NLRB 962, 963 fn. 9 (1997). Since there is no evidence of one of the primary or statutory indications of supervisory status, these secondary indicia cannot be relied on as evidence of supervisory status. I therefore find that this evidence does not establish the Coordinators are Section 2(11) supervisors.

CONCLUSION

Based on the foregoing, and the record as a whole, I conclude that the Employer has failed to establish that Security Shift Coordinators possess supervisory authority as defined in Section 2(11) of the Act. Accordingly, I find that the Security Shift Coordinators are included in the certified bargaining unit represented by Petitioner.

IT IS ORDERED that the Petitioner's request to clarify the bargaining unit represented by the Petitioner to include the Security Coordinators is granted, and the unit shall be clarified as follows:

All Security Officers, including Security Shift Coordinators, regularly scheduled to work a defined number of hours per pay period (i.e., those with an authorized FTE (full time equivalent status)) who are employed by the Employer at its facility located at 3300 Oakdale Avenue North, Robbinsdale, Minnesota, but excluding Casual Part-Time Security Officers, supervisors as defined by the Act, managerial employees, and all other employees.

Right to Request Review. Pursuant to the provisions of Section 102.67 of the National Labor Relations Board's Rules and Regulations, Series 8, as amended, you may obtain review of this action by filing a request with the Executive Secretary, National Labor Relations Board, 1099 - 14th Street, N.W., Washington, DC 20570-0001. This request for review must contain a complete statement setting forth the facts and reasons on which it is based.

Procedures for Filing a Request for Review. Pursuant to the Board's Rules and Regulations, Sections 102.111–102.114, concerning the Service and Filing of Papers, the request for review must be received by the Executive Secretary of the Board in Washington, D.C., by close of business on **July 7, 2010**, at 5:00 p.m. Eastern Time, unless filed electronically.

Consistent with the Agency's E-Government initiative, parties are encouraged to file a request for review electronically. If the request for review is filed electronically, it will be considered timely if the transmission of the entire document through the Agency's website is **accomplished by no later than 11:59 p.m. Eastern Time** on the due date. Please be advised that Section 102.114 of the Board's Rules and Regulations precludes acceptance of a request for review by facsimile transmission. A copy of the request for review must be served on each of the other parties to the proceeding, as well as on the undersigned, in accordance with the requirements of the Board's Rules and Regulations. Upon good cause shown, the Board may grant special permission for a longer period within which to file. A request for extension of time, which may also be filed electronically, should be submitted to the Executive Secretary in Washington, and a copy of such request for extension of time should be submitted to the Regional Director and to each of the other parties to this proceeding. A request for an extension of time must include a statement that a copy has been served on the Regional Director and on

each of the other parties to this proceeding in the same manner or a faster manner as that utilized in filing the request with the Board.

Filing a request for review electronically may be accomplished by using the E-filing system on the Agency's website at www.nlrb.gov. Once the website is accessed, select the E-Gov tab and then click on the E-filing link on the pull-down menu. Click on the "File Documents" button under Board/Office of the Executive Secretary and then follow the directions. The responsibility for the receipt of the request for review rests exclusively with the sender. A failure to timely file the request for review will not be excused on the basis that the transmission could not be accomplished because the Agency's website was offline or unavailable for some other reason, absent a determination of technical failure of the site, with notice of such posted on the website.

Dated at Minneapolis, Minnesota, this 23rd day of June, 2010.

/s/ Marlin O. Osthus

Marlin O. Osthus, Regional Director
National Labor Relations Board
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